IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICAION NO. 208 OF 2006

Nandkumar Tukaram Kokate .. Applicant

versus

The State of Maharashtra & ors. .. Respondents

...

Mr.V.S. Kapse for the applicant.

Mr.A.R. Patil, AGP for respondent nos.1 and 2.

CORAM : D.G. KARNIK, J

DATED : 7th December 2006

P.C.:

1. By this revision petitioner, the petitioner challenges the judgement and order dated 29th September 2005 passed by the Principal Judge of the City Civil Court, Mumbai rejecting the petitioner’s appeal under the Bombay Public Premises Eviction Act (for short "PPE Act")

2. By an unregistered rent note dated 22nd September 1964, the petitioner's father was granted on rent the suit premises admeasuring about 12'6" x 8' situated in the precints of the Esplanade Court, Mumbai for conducting a pan bidi shop on the monthly rent of Rs.23/-. After the death of the petitioner's father by an unregistered rent note containing similar terms was executed between the Metropolitan Magistrate,Esplanade Court Mumbai and the petitioner on 6th August 1979. Thereafter, an agreement of leave and licence was executed between the Chief Metropolitan Magistrate and the petitioner on 25th September 1998 under which the petitioner was granted the licence to run a pan bidi shop in the suit premises for a period ending on 31st December 1998. After the expiry of the period of leave and licence, by a notice dated 13th May 2002, the petitioner was called upon to vacate the suit premises. As the petitioner failed to comply with the notice proceedings under the PPE Act were initiated against the petitioner. On 30th May 2005, the competent authority passed an order of eviction. The petitioner's appeal in the City Civil Court was dismissed by the order dated 29th September 2005. That order was impugned in this revision

application.

3. Counsel for the petitioner submitted that an unregistered note for a period of 30 years was executed in favour of the petitioner on 6th August 1979. Period of 30 years has not yet expired and therefore the petitioner cannot be said to be an unauthorised occupant. Lease for a period of more than one year can be created only by an unregistered deed. The unregistered rent note is dated 6th September 1979 could not have created a lease for a period of 30 years. It would only creates a monthly tenancy in favour of the petitioner. The tenancy has been terminated by a notice to quit and he has been asked to vacate the premises. Therefore, it cannot be said that the petitioner is an authorised occupant under a rent note for a period of 30 years.

4. It must also be noted that after the rent note dated 6th September 1979 petitioner executed a leave and licence agreement with the chief Metropolitan Magistrate on 25th September 1998. Obviously, this was executed because the previous rent note dated 6th August 1979 did not and could not create a lease for a period of 30 years and created only a monthly tenancy. Execution of a leave licence agreement by the petitioner would operate as an

estopppal against him and he cannot for contend that he is in possession as a lessee for a period of 30 years.

5. Mr.Kapse then submitted that apart from the petitioner's pan bidi shop, the Government has also permitted another person to run a hotel in the premises of the Esplanade Court itself. No action has been taken against the owner of the hotel and the petitioner is being discriminated. Nothing has been brought on record to show what were the terms on which the hotel premises were granted and whether the period of the lease or tenancy of the hotel owner is also over. It cannot therefore be said that the owner of the hotel is in unauthorised occupation of the premises and the petitioner is being discriminated.

6. In the circumstances, there is no merit in the revision application which is hereby dismissed.

7. At the request of the learned counsel for the petitioner, the petitioner is granted three months time for vacating the suit premises subject to his filing an undertaking in this court in the usual form within two weeks.

(D.G. KARNIK, J)